

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

MACA.No. 1306 of 2006()

OPMV.1015/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL

APPELLANT/4TH RESPONDENT:

NATIONAL INSURANCE COMPANY LIMITED,
THIRUVANANTHAPURAM, DIVISIONAL OFFICE, IIND FLOOR,
KESAVA TOWES, GANDHARI AMMANKOVIL ROAD, PULIMOODU,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
ADMINISTRATIVE OFFICER, MOTOR THIRD PARTY CLAIM
SECTION, AJAY VIHAR, M.G.ROAD, ERNAKULAM.

BY ADV. SRILAL GEORGE

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 3:

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1. SOMASEKHARAN NAIR.S, S/O.R.SREEDHARA
PILLAI, KOZHIYOTTU VEEDU, NEAR MUTTAPPALAM,
ALTHARAMOODU, PERUMKUZHI P.O., AZHOOR,
THIRUVANANTHAPURAM.
 2. MANAGING DIRECTOR, KSRTC,
TRANSPORT BHAVAN, THIRUVANANTHAPURAM-23.
 3. MADHUKUMAR, (DRIVER, KSRTC),
S/O.RAGHAVAN, VILAYIL VEEDU, MARKET ROAD,
ATTINGAL P.O., THIRUVANANTHAPURAM.
 4. CHANDRAN, (DRIVER, KSRTC),
S/O.NEELAKANTAN, KARIMALA VEEDU,
PANAMA JUNCTION, AYAKKADU, THRIKKARIYOOR,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT.

R2 BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 22/11/2007, ALONG WITH MACA NO.1396/2006 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

**M.A.C.A.Nos.1306 of 2006,
1558 of 2006, 1396 of 2006,
1397 of 2006, 1398 of 2006,
1463 of 2006, 1477 of 2006,
1484 of 2006, 1485 of 2006,
1486 of 2006, 1524 of 2006,
1558 of 2006, 1663 of 2006,
1718 of 2006 & 1756 of 2006**

Dated, this the 22nd day of November, 2007

JUDGMENT

The National Insurance Company which was impleaded as the fourth respondent in a batch of Original Petitions filed before the Motor Accidents Claims Tribunal, Thiruvananthapuram and Motor Accidents Claims Tribunal, Attingal is the appellant in all these appeals.

2. Appellant is challenging its liability to indemnify the first respondent Managing Director, KSRTC in all these cases. The short facts necessary for the disposal of the appeals are as follows: An ordinary stage carriage bus owned by the first respondent, bearing registration No.KL/15-1913 was proceeding from Attingal to Thiruvananthapuram. When it reached near Pangappara another stage carriage fast passenger bus owned by the first respondent, bearing registration No.KL/15-4565 came from Thiruvananthapuram to Attingal. A collision took place between these two vehicles. A number of passengers travelling in both the vehicles sustained injuries. One of the victims filed Original Petition claiming compensation before the Motor Accidents Claims Tribunal, Neyyattinkara. Some of the injured filed Original Petitions claiming

compensation before the Motor Accidents Claims Tribunal, Thiruvananthapuram. Another batch of Original Petitions were filed before the Motor Accidents Claims Tribunal, Attingal. The cases filed before the Tribunal at Thiruvananthapuram were consolidated and jointly tried by that Tribunal. The cases filed before the Tribunal at Attingal were also consolidated and jointly tried by that Tribunal. Motor Accidents Claims Tribunal, Thiruvananthapuram disposed of all the cases filed before it on 29.10.2004. It found that the accident occurred due to the negligence of the drivers of both the vehicles and the driver of the fast passenger bus was 40% negligent and driver of the ordinary bus was 60% negligent. Appellant who was the insurer of the fast passenger bus was directed to pay 40% of the compensation awarded in all those cases. A copy of the award passed by the Motor Accidents Claims Tribunal, Thiruvananthapuram was produced before the Motor Accidents Claims Tribunal, Attingal. Tribunal at Attingal accepted the findings of the Tribunal at Thiruvananthapuram and held that the accident occurred due to the negligence of the drivers of both the vehicles. It also apportioned the liability as done by the Tribunal at Thiruvananthapuram and directed the appellant who was the insurer of the fast passenger bus to pay 40% of the compensation. Challenging the awards in which the compensation amounts exceeded Rs.10,000/- the fourth respondent insurer has filed all these appeals.

3. The main contention raised in all these appeals is regarding the

liability of the insurer to indemnify the insured. I do not propose to consider whether the quantum of compensation awarded in these cases are excessive or not. Further the appellant also disputing only its liability and not the quantum of compensation. Both the Tribunals found that both the drivers were responsible for the accident.

4. The learned counsel appearing for the appellant has argued that the above finding is without any basis and against the documentary evidence adduced in the cases. It is argued that the road at the place of accident lies east-west and tarred portion of the road is having 8.20 metres width. It is also argued that the place of accident as per Ext.A2 mahazer is 2.25 metres north of the southern tarred end. It is argued that that fact alone shows that the ordinary bus came to the extreme wrong side and hit against the fast passenger bus without any reason. It is also argued that in FIR, scene mahazer or final report there is absolutely nothing to show that there was any other vehicle on the northern side of the road so as to compel the driver of the ordinary bus to take the bus to the wrong side. It is argued that the both the Tribunals went wrong in relying on the evidence of the driver of the ordinary bus who was interested in saving himself by giving false evidence. It is argued that the materials on record clearly establish that the accident occurred due to the negligence of the driver of the ordinary bus alone and as such the Tribunal went wrong in holding that the driver of the fast passenger

bus is liable for the accident to the extent of 40% and hence the Insurance Company is liable to pay that much amount.

5. The petitioners produced the records pertaining to the criminal cases. None of the claimants went to the box and adduced oral evidence. The claimants maintained a stand that it was a case of contributory negligence and as such drivers of both the vehicles were liable. It is contended that K.S.R.T.C. was the owner of both the vehicles and as such it is not necessary for the claimants to plead and prove negligence on anyone of the drivers. The only oral evidence adduced in this case is that of RW1 who was the driver of the ordinary bus.

6. Ext.A1 is the copy of the FIR registered in the case. A reading of that FIR shows that FIR was registered against RW1 alone. Ext.A2 scene mahazer shows that at the place of accident the road is lying east-west and the tarred portion of the road is having a width of 8.20 metres. On the northern side of the road there is a footpath having a width of 1.30 metres and on the southern side of the road there is a footpath having a width of 90 cms. Scene mahazer also shows that at the place of accident the road lies 150 metres straight to west and 200 metres straight to east. So going by the scene mahazer the northern one half of the road is having 4.40 metres width. The southern one half is also having the same width and road is lying straight for 350 metres from the place of accident to both sides. Ext.A3 is the mahazer of the vehicles involved in the case. It

shows that the entire front portion of the ordinary bus was damaged. Regarding the fast passenger bus damages were noted mostly on the right side of the front portion. Driver of the ordinary bus was examined as RW1. He gave evidence to the effect that at the place of accident there is a curve and slop and he was negotiating the curve and when he reached the place of occurrence the fast passenger bus over took an autorickshaw and came to the wrong side and hit against his bus. He pleaded ignorance regarding the scene mahazer and final report prepared in the case. But there was some undisputed facts. Going by the scene mahazer it is seen that the accident occurred on a straight road which is having a length about 350 metres. Tarred portion of the road is having 8.20 metres width. Going by the scene mahazer it is seen that in between the southern tar end and the place of accident there was a space of 2.25 metres. The evidence of RW1 shows that one of the bus was trying to overtake the another vehicle. That can only be the ordinary bus. Evidence on record shows that the accident occurred when RW1 trying to overtake the autorickshaw. The fact that the ordinary bus crossed the mid-line was also clear from the evidence. But the fact remains that the accident occurred on a straight road. If the driver of the fast passenger bus was careful, he could have reduced the speed of his bus or he could have avoided the accident by slowing down the bus or severing the vehicle to further left. There was no head on collision. If he had severed the vehicle towards left the accident

could have been avoided. It is to be noted that there was 2.25 metres space left between the vehicle and southern tar end. So it is not possible to accept the argument of the appellant that RW1 was solely responsible for the accident. It is true that the ordinary bus crossed the mid-line of the road. But the documents itself speak that if the driver of the fast passenger bus was more careful the unfortunate accident could have been avoided. After taking all aspects the Tribunal fixed the liability to 60:40. That is a finding of fact based on good evidence. I do not find any reason to interfere with that finding of fact.

In the result, all the appeals are dismissed.

I.A.No.1455/2006 in M.A.C.A.No.1306/2006, I.A.No.1586/2006 in M.A.C.A.No.1396/2006, I.A.No.1588/2006 in M.A.C.A.No.1397/2006, I.A.No.1590/2006 in M.A.C.A.No.1398/2006, I.A.No.1682/2006 in M.A.C.A.No.1463/2006, I.A.No.1688/2006 in M.A.C.A.No.1477/2006, I.A.No.1702/2006 in M.A.C.A.No.1484/2006, I.A.No.1704/2006 in M.A.C.A.No.1485/2006, I.A.No.1708/2006 in M.A.C.A.No.1486/2006, I.A.No.1771/2006 in M.A.C.A.No.1524/2006, I.A.No.1791/2006 in M.A.C.A.No.1558/2006, I.A.No.1904/2006 in M.A.C.A.No.1663/2006, I.A.No.1953/2006 in M.A.C.A.No.1718/2006 and I.A.No.1980/2006 in M.A.C.A.No.1756/2006 will stand dismissed.

**K. PADMANABHAN NAIR,
JUDGE.**